

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ORION IP, LLC,

v.

COSTCO WHOLESALE CORP., et al.

Civil Action No. 6:07-CV-106 LED

JURY

DOCKET CONTROL ORDER

It is hereby ORDERED that the following schedule of deadlines is in effect until further order of this

Court:

Date	
<p>October 12, 2009</p> <p>Court designated date – not flexible without good cause - Motion Required</p>	<p>9:00 a.m. JURY TRIAL as reached at the United States District Court, 211 W. Ferguson, 3rd floor, Courtroom of Judge Leonard Davis, Tyler, Texas</p> <p>EXHIBITS & EXHIBIT LISTS: Each party is requested to provide the Court with an original and two courtesy copies of exhibits and exhibit lists. The Court's preferred format for Exhibit Lists is available on the Court's website at www.txed.uscourts.gov under "Judges' Orders & Information."</p> <p>The original exhibits that are agreed upon by the parties, should be ready to be tendered to the Clerk of the Court at the beginning of trial. Other exhibits that are admitted during trial should be tendered to the Clerk of the Court immediately after admission.</p> <p>The parties are further requested to have all exhibits labeled with the following information on each label: Designation of Plaintiff's or Defendant's Exhibit Number and Case Number. For example:</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Plaintiff's Exhibit</p> <p>Exhibit No. _____</p> <p>Case No. _____</p> </div> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>Defendant's Exhibit</p> <p>Exhibit No. _____</p> <p>Case No. _____</p> </div> </div>
October 5, 2009	9:00 a.m. JURY SELECTION at the United States District Court, 211 W. Ferguson, 3 rd Floor, Courtroom of Judge Leonard Davis, Tyler, Texas.
<p>September 24, 2009</p> <p>Court designated date – not flexible without good cause – Motion</p>	9:00 a.m. PRETRIAL CONFERENCE at the United States District Court, 211 W. Ferguson, 2 nd Floor, Courtroom of Judge John Love, Tyler, Texas

required	
September 22, 2009	Parties to file estimates of the amount of time they request at jury selection and trial for 91) voir dire, (2) opening statements, (3) direct and cross examinations, and (4) closing arguments.
September 21, 2009	Motions in Limine due. The parties are directed to confer and advise the Court on or before 3:00 o'clock p.m. the day before the pre-trial conference (which is the date of trial in this case) which paragraphs are agreed to and those that need to be addressed at the pre-trial conference.
September 21, 2009	Pending Motions, Remaining pending motions will be heard at the Pretrial Conference. Pending Motions notebooks due. The moving party is to provide the Court with two tabbed notebooks. One notebook is to include Pending Motions, responses, replies and sur-replies. The second notebook is to include Motions in Limine with responses, replies and sur-replies. When preparing the notebooks, the first tab should be the abbreviated name of motion, i.e., "XXX Co. Sum Judg" or "Strike Testimony-Smith". Second tab: "Response". Third tab: "Reply". Lat tab, "Sur-Reply". Voluminous exhibits should be placed in a separate tabbed notebook. No index please.
September 19, 2009	Pretrial Objections due.
September 4, 2009	Objections to Rebuttal Deposition Testimony due.
August 29, 2009	Rebuttal Designations and Objections to Deposition Testimony due. For rebuttal designations, cross-examination line and page numbers to be included.
August 20, 2009	Pretrial Disclosures due. Video and Stenographic Deposition Designations due. Each party who proposes to offer deposition testimony shall file a disclosure identifying the line and page numbers to be offered. In video depositions, each party is responsible for preparation of the final edited video in accordance with their parties' designations and the Court's rulings on objections.
July 31, 2009	Joint Pretrial Order, Joint Proposed Jury Instructions with citation to authority, and Form of the Verdict for jury trials due. Proposed Findings of Fact and Conclusions of Law with citation to authority for bench trials. Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings due. If a daily transcript or real time reporting of court proceedings is requested for trial or hearings, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Shea Sloan, at shea_sloan@txed.uscourts.gov.
June 27, 2009	Response to Dispositive Motions (including <i>Daubert</i> Motions) due. Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> motions, shall be due in accordance with Local Rule CV-7(e).
May 29, 2009	Dispositive Motions due from all parties and any other motions that may require a hearing (including <i>Daubert</i> motions); Motions for Summary Judgment shall comply with Local Rule CV-56.
May 26, 2009	Parties to Identify Rebuttal Trial Witnesses.
May 15, 2009	Parties to Identify Trial Witnesses; Amend Pleadings (after Markman Hearing). It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline.

	However, except as provided in Patent Rule 3-6, if the amendment would affect preliminary or final infringement contentions or preliminary or final invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.
May 1, 2009	Discovery deadline.
April 1, 2009	Parties Designate Rebuttal Expert Witnesses (non-construction issues). Rebuttal Expert witness reports due. Refer to Local Rules for required information.
March 20, 2009	Parties with burden of proof designate expert witnesses (non-construction issues). Expert witness reports due. Refer to Local Rules for required information.
February 20, 2009	Comply with P.R.3-7 - Furnishing documents and privilege logs pertaining to willful infringement.
January 29, 2009, if necessary	Markman Hearing at 9:30 a.m. at the United States District Court, 211 West Ferguson, 3 rd Floor, Courtroom of Magistrate Judge Love, Tyler, Texas.
January 19, 2009	Parties shall jointly submit a claim construction chart on computer disk in WordPerfect format or in such other format as the Court may direct in accordance with P.R. 4-5 (d).
January 15, 2009	Parties to file a notice with the Court stating the estimated amount of time requested for the <i>Markman</i> Hearing. The Court will notify the parties if it is unable to accommodate this request. The moving party is to provide the Court with 2 binders containing their reply brief and exhibits appropriately tabbed. If a technical advisor has been appointed the moving party is to provide their brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor. Deadline for moving party's reply brief and supporting evidence regarding additional claim construction.
January 8, 2009	Deadline for responding party's responsive brief and supporting evidence regarding construction of additional claim terms; reconsideration of claim construction. The party is to provide the Court with 2 binders containing their response and exhibits. If a technical advisor has been appointed, the party is to provide their responsive brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.
December 24, 2008	Deadline for party seeking construction of terms in addition to those terms already construed by the Court in the <i>Orion v. Staples</i> and <i>Orion v. Hyundai</i> cases, or seeking reconsideration of such terms, to file an opening brief and any evidence supporting its proposed claim construction. The moving party is to provide the Court with 2 binders containing their <i>Markman</i> brief and exhibits. If a technical advisor has been appointed, the moving party is to provide their <i>Markman</i> brief on disk or CD along with a hard copy, tabbed and bound in notebook format with exhibits to the advisor.
December 18, 2008	Deadline for parties, if they desire, to provide Court with tutorials concerning technology involved in patent. If a technical advisor has been appointed, each party that provides a tutorial is requested to provide a copy to the advisor.

December 11, 2008	Discovery Deadline - Claim Construction Issues.
November 27, 2008	Respond to Amended Pleadings.
November 20, 2008	Parties to provide name, address, phone number, and curriculum vitae for three (3) agreed technical advisors and information regarding the nominees' availability for <i>Markman</i> hearing or a statement that they could not reach an agreement as to any potential technical advisor.
November 13, 2008	Amended Pleadings (pre-claim construction) due from all parties. It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after the deadline. However, if the amendment would effect preliminary infringement contentions or preliminary invalidity contentions, a motion must be made pursuant to Patent Rule 3-7 irrespective of whether the amendment is made prior to this deadline.
November 10, 2008	Comply with P.R. 4-3 - Filing of Joint Claim Construction and Prehearing Statement.
October 10, 2008	Comply with P.R. 4-2 - Exchange of Preliminary Claim Constructions and Extrinsic Evidence. Privilege Logs to be exchanged by parties (or a letter to the Court stating that there are no disputes as to claims of privileged documents).
September 10, 2008	Comply with P.R. 4-1 - Exchange Proposed Terms and Claim Elements for Construction.
December 28, 2007	<p>Comply with P.R. 3-3 - Invalidity Contentions due. Thereafter, it is necessary to obtain leave of Court to add and/or amend invalidity contentions, pursuant to Patent Rule 3-6.</p> <p>Add any inequitable conduct allegations to pleadings. It is not necessary to file a motion for leave to add inequitable conduct allegations to pleadings prior to this date. Thereafter, it is necessary to obtain leave of Court to add inequitable conduct allegations to pleadings.</p>
November 13, 2007	<p>Comply with P.R. 3-1 and P.R. 3-2 - Disclosure of Asserted Claims and Preliminary Infringement Contentions due. Thereafter, it is necessary to obtain leave of Court to add and/or amend infringement contentions, pursuant to Patent Rule 3-7.</p> <p>Join Additional Parties. It is not necessary to file a motion to join additional parties prior to this date. Thereafter, it is necessary to obtain leave of Court to join additional parties.</p> <p>Add new patents and/or claims for patents-in-suit. . It is not necessary to file a motion to add additional patents or claims prior to this date. Thereafter, it is necessary to obtain leave of Court to add patents or claims.</p>
February 15, 2008	Mediation to be completed. Mike Patterson of 515 S. Vine Ave. in Tyler, Texas is appointed as mediator in this cause. The mediator shall be deemed to have agreed to the terms of Court Ordered Mediation Plan of the United States District court of the Eastern District of Texas by going forth with the mediation in accordance with

	this order. General Order 99-2.
5 days	EXPECTED LENGTH OF TRIAL.

In the event any of these dates fall on a weekend or Court holiday, the deadline is modified to be the next Court business day.

The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the Court will assume that the party has no opposition.” Local Rule CV-7(e) provides that a party opposing a motion has 15 days in which to serve and file supporting documents and briefs after which the Court will consider the submitted motion for decision.

OTHER LIMITATIONS

(a) All depositions to be read into evidence as part of the parties’ case-in-chief shall be EDITED so as to exclude all unnecessary, repetitious, and irrelevant testimony; ONLY those portions which are relevant to the issues in controversy shall be read into evidence.

(b) The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).

(c) The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:

(i) The fact that there are motions for summary judgment or motions to dismiss pending;

(ii) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;

(iii) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

So ORDERED and SIGNED this 12th day of September, 2007.



**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**